

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2021-153-S - ORDER NO. 2021-814  
DECEMBER 21, 2021

IN RE:	Application of Palmetto Wastewater	)	ORDER RULING ON
	Reclamation, Incorporated for an Adjustment	)	APPLICATION FOR
	of Rates and Charges	)	ADJUSTMENT IN RATES,
		)	DETERMINING RETURN
		)	ON EQUITY, AND
		)	APPROVING PARTIAL
		)	SETTLEMENT

**I. INTRODUCTION**

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Application of Palmetto Wastewater Reclamation, Inc. (“PWR” or “Company”) for an increase in rates and charges for the provision of sewer service and the modification of certain terms and conditions related to the provision of such service.

PWR is a public utility, as defined by S.C. Code Ann. § 58-5-10(4) (2015), providing wastewater collection and treatment service to 8,009 equivalent dwelling units (“EDUs”) of residential and commercial customers as of September 2, 2021. (Tr. p. 139.3). These customers are located in Richland and Lexington counties. Treatment of wastewater generated by PWR’s customers is performed at PWR’s Alpine/Stoops Creek Wastewater Treatment Plant (“WWTP”) and the Woodland Hill WWTP, which are operated pursuant to a National Pollutant Discharge Elimination System permit issued by the South Carolina Department of Health and Environmental Control, allowing for discharge of up to a combined 2.288 million gallons per day. (Application Exhibit C, p. 39 of 53).

(Alpine/Stoops Creek's authorized discharge is 2 million gallons per day and Woodland Hill's authorized discharge is 2.88 million gallons per day). The Company is a wholly-owned subsidiary of Ni South Carolina, Inc., which is ultimately owned by SouthWest Water Company ("SWWC"), a privately held company. (Tr. p. 268.76).

PWR's current schedule of rates and charges for customers was approved by Order No. 2019-314, issued May 14, 2019, in Docket No. 2018-82-S. Under that schedule, PWR charges residential customers a flat rate of \$37.92 per month. Mobile home customers are charged a flat monthly rate of \$28.30. Commercial customers, including industrial customers, are charged a flat monthly rate of \$37.92 per single family equivalent (SFE). The previously approved rates gave PWR an opportunity to earn additional annual revenues of \$327,548; a return on rate base of 7.81% based upon a return on equity ("ROE") of 9.93% and a cost of debt of 5.23%; and a capital structure of 55% equity and 45% debt, all of which resulted in an operating margin of 14.56%. (*See*, Order No. 2019-314, p. 15; Order No. 2019-314 Exhibit 1, p. 4).

By its Application, PWR seeks an increase in its monthly service charge to a flat rate of \$43.12 for residential customers, \$32.18 for mobile home customers, and \$43.12 for commercial customers per SFE. If approved, these rates would result in a total increase of 13.72% for all three classes (\$5.20 for residential customers, \$3.88 for mobile home customers, and \$5.20 for commercial customers). PWR also seeks rate base treatment and certain tariff modifications for a test year ending December 31, 2020.

Since PWR's last rate relief proceeding, it indicates it has made approximately \$2 million in capital improvements to its wastewater facilities. (Application ¶ 13, p. 4).

Included in the amount are, among other things, replacement of effluent pumps, rebuilding floating brush aerators, enhancement of the lab facility, and replacement of 2500 linear feet of gravity sewer line and 140 linear feet of main trunk sewer line. (Tr. p. 67.3).

## **II. PROCEDURAL HISTORY**

On May 3, 2021, PWR filed with the Commission its Notice of Intent to seek rate relief. This notice was provided to the South Carolina Office of Regulatory Staff (“ORS”) as required by S.C. Code Ann. § 58-5-240(A) (2015) and to the South Carolina Department of Consumer Affairs (“DCA”) as required by S.C. Code Ann. § 37-6-604(C) (Supp. 2020). PWR filed its Application on June 16, 2021, pursuant to S.C. Code Ann. § 58-5-240 (2015) and S.C. Code Ann. Regs. 103-503 and 103-512(4)(A) (2012).

By letter dated June 30, 2021, the Clerk’s Office of the Commission instructed PWR to publish a Notice of Filing and Public Hearings (“NOFPH”) in newspapers of general circulation in the area affected by PWR’s Application and to mail copies of the same to all customers affected by the proposed rates and charges. Among other things, the NOFPH provided information regarding the nature of the Application and advised any person desiring to participate as a party of record to file a Petition to Intervene on or before September 6, 2021. PWR filed its Affidavit of Publication on July 13, 2021, demonstrating that the NOFPH was published in accordance with the instructions of the Clerk’s Office. Additionally, to comply with the instruction of the Clerk’s Office to provide notice to all consumers via bill inserts, PWR advised the Clerk’s Office, Commission, and parties of record that it would serve each affected customer by the US Postal Service on or before August 16, 2021 since practical considerations do not permit PWR to provide notice via

bill inserts. PWR filed an Affidavit of Mailing on August 27, 2021 attesting that “all affected customers” were sent via U.S. Mail a copy of the Notice of Filings and Public Hearings to comply with the notice request by the Clerk’s Office.

Further, the June 30, 2021 letter from the Clerk’s Office of the Commission instructed PWR to furnish, at its own expense by U.S. Mail the NOFPH to the County Administrator in any county that the Utility provides services and to the City Administrator in any city where the Utility provides services and provide a certification on or before September 6, 2021 that this notification had been furnished. On July 15, 2021, PWR furnished a Certificate of mailing, stating that the NOFPH was mailed to the Lexington County Administrator, the Richland County Administrator, the Irmo City Administrator, and the City of Columbia City Manager, thereby complying with this portion of the Clerk’s letter.

On June 18, 2021, a Petition to Intervene was filed by Roger Hall as Deputy Consumer Advocate for the State of South Carolina on behalf of the DCA, which was granted. *See* Order No. 2021-113H. No other Petitions to Intervene were filed. Pursuant to S.C. Code Ann. § 58-4-10(B) (Supp. 2020), ORS is a party of record in this proceeding.

PWR filed direct testimony and exhibits of: Mujeeb Hafeez, Assistant Controller in Corporate Shared Services at PWR parent company SWWC; Craig Sorensen, President of PWR and Southeast Utility Systems, Inc., which oversees SWWC’s business in Alabama, Florida, and South Carolina; Donald Burkett, Executive Vice President of Burkett, Burkett & Burkett, Certified Public Accountants, P.A.; and Paul Moul, Managing

Consultant at P. Moul & Associates. The Company also filed the rebuttal testimony of Craig Sorensen, Donald Burkett, Mujeeb Hafeez, and Paul Moul.

The DCA filed the direct testimony and exhibits of Aaron Rothschild, President of Rothschild Consulting, and Lafayette K. Morgan, Jr., Public Utilities Consultant with Exeter Associates, Inc. The DCA also filed the surrebuttal testimony of Mr. Rothschild and the surrebuttal testimony and exhibits of Mr. Morgan.

The ORS filed direct testimony for: Christina Seale, Audit Coordinator in the Audit Department of ORS; Daniel Hunnell, Senior Analyst in the Water Operations Department of ORS; and David Garrett, Managing Member of Resolve Utility Consulting, PLLC. ORS also filed surrebuttal testimony for Christina Seale, Daniel Hunnell, and David Garrett.

#### **A. Public Hearing**

The Commission held one (1) customer public hearing on November 8, 2021, to allow PWR's customers an opportunity to present their views regarding the Application. The Honorable Florence P. Belser, Vice Chair of the Commission, presided at the public hearing. One customer testified. (*See* Hearing Exhibit 1).

#### **B. Partial Stipulations Among Parties**

Pursuant to S.C. Code Ann. §1-23-320(F), and all other applicable statutes and regulations, the Parties (ORS, PWR, and DCA) filed twenty-four (24) stipulations on November 10, 2021. The stipulations resolved all issues in dispute between the Parties except the authorized Return on Equity (ROE). The stipulations, inter alia, address: (i) the appropriate adjustments to PWR's expenses and revenues for ratemaking purposes; (ii) tariff language modifications that result in additional customer rights and protections; (iii)

the appropriate capital structure of PWR for ratemaking purposes; (iv) the appropriate cost rate for PWR's debt for ratemaking purposes; and (v) a "rate freeze" until June 2022.

On November 10, 2021, at the commencement of the evidentiary hearing, the Parties' stipulations were entered into evidence as Hearing Exhibit No. 2 without objection by any party.

The provisions of the Parties' partial stipulation provide a rate base of \$11,511,324; a cost of debt of 3.79%; a capital structure of 45% debt and 55% equity; a rate case expense cap of \$160,000; amendments to tariff language which increase customer protections; and a stay-out provision. The Parties agreed to ORS's recommended adjustment related to the Company's allocation of corporate overhead and shared costs to PWR; ORS's recommended adjustment to amortize rate case expenses over three (3) years; the correction to ORS Adjustment 3 – Depreciation Expense described in ORS Witness Seale's Surrebuttal Testimony; revenue adjustments proposed by ORS based on the actual number of customers and equivalent residential customers by class as of the end of August 2021; and the following ratepayer protections ("ring-fencing provisions") described in ORS Witness David J. Garrett's Direct Testimony related to South Carolina Utility Systems, Inc.'s<sup>1</sup> acquisition of Ni South Carolina, LLC (now Ni South Carolina, Inc.), the parent company of PWR, from Ni Pacolet Milliken Utilities, LLC (the "Acquisition"): (i) PWR will not seek recovery of any goodwill associated with the Acquisition in any future rate proceedings; (ii) PWR will not seek to recover any acquisition or transaction costs

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<sup>1</sup> South Carolina Utility Systems, Inc. (SCUS) is a wholly-owned subsidiary of SWWC. SCUS acquired the South Carolina wastewater utility operations of Ni Pacolet Milliken Utilities from Pacolet Milliken, LLC. PWR is one of the utility companies previously owned by Ni Pacolet Milliken Utilities acquired SCUS. Tr. p. 233.9; 268.76

associated with the Acquisition in any future rate proceedings; (iii) PWR will not in any way be the guarantor of any debt for SWWC or any SWWC affiliate or subsidiary entities unless the debt is incurred for purposes specific to the PWR system and operations; (iv) any debt incurred by PWR is and will only be used for purposes specific to the PWR system; and (v) PWR will not lend cash or any other capital directly to SWWC or any SWWC affiliate or subsidiary entities except for routine and prudent cash management practices.

The Parties also agreed the amount of rate case expenses to be amortized over three (3) years will not exceed \$160,000. The Parties agreed to amend Adjustment 2L to allow PWR recovery of the additional \$14,336 in chemicals expense requested in PWR Witness Burkett's Rebuttal Testimony. The Parties agreed to various fallout adjustments to reflect the terms above and the ROE granted by the Commission. The Company agreed to amend its Rate Schedule to remove Section 13 - Limitation of Liability. The Company agreed to amend its Rate Schedule to remove language in the last paragraph of Section 1 – Monthly Charge such that it shall now read:

The Utility may, at its discretion, for the convenience of the owner, bill a tenant in a multi-unit building consisting of four or more residential units which is served by a master sewer meter or a single sewer connection. However, in such cases all arrearages must be satisfied before service will be provided to a new tenant.

Hearing Exhibit 2, p. 5 of 11.

### **C. Evidentiary Hearing**

The evidentiary hearing was held on November 10, 2021 and November 12, 2021. For the convenience of the Parties, the hearing was held in part virtually and in part at the

offices of the Commission. (*See* Order No. 2021-140-H). The Honorable Justin T. Williams, Chairman of the Commission, presided at the evidentiary hearing. PWR was represented by Charles Terreni, Esquire, and Scott Elliott, Esquire. DCA was represented by Roger Hall, Esquire, and Connor Parker, Esquire. ORS was represented by Christopher Huber, Esquire, and Nicole Hair, Esquire.

As part of the partial stipulation, the Parties agreed to stipulate into the record the pre-filed testimony and exhibits (collectively, the “Stipulated Testimony”) of the witnesses stated below without objection, change, amendment, or cross-examination except for changes comparable to those that would be presented via an errata sheet or through a witness noting a correction consistent with the Partial Stipulation. With the exception of ORS Witness Daniel P. Hunnell II, the Parties further agreed to the testimony and exhibits of the below witnesses being stipulated into the record without them appearing at the merits hearing on the Application. With respect to ORS Witness Hunnell, the parties reserved their right to engage in redirect examination or recross, if there was redirect, as necessary to respond to issues raised by the examination of ORS Witness Hunnell, if any, by non-parties, parties that are not signatories to the partial stipulation, or the Commission.

STIPULATED TESTIMONY FROM WITNESSES		
PWR WITNESSES	DCA WITNESS	ORS WITNESSES
1. Donald H. Burkett	1. Lafayette Morgan, Jr.	1. Christina L. Seale
2. Mujeeb Hafeez		2. Daniel P. Hunnell II

The remaining witnesses were sworn in and their pre-filed testimonies, including any corrections and accompanying exhibits, were accepted into the record. PWR, DCA and ORS presented their remaining witnesses for cross-examination from the Parties and questioning from the Commission.

### **III. STATUTORY STANDARDS**

The Company's current rates now in effect were approved in Commission Order No. 2019- 314 issued on May 14, 2019, in Docket No. 2018-82-S. The Company is a public utility, as defined by S.C. Code Ann. Section 58-5-10(4), providing sewer service to the public for compensation in certain areas of Richland and Lexington Counties. Application ¶ 2. The Company proposes a test year of January 1, 2020 to December 31, 2020. Application ¶ 5.

The Application, testimony, exhibits, affidavits of publication, and public notices submitted by the Company comply with the procedural requirements of the South Carolina Code of Laws and the Regulations promulgated by this Commission.

Pursuant to Section 58-5-210 of the South Carolina Code of Laws (2015), the Commission must fix just and reasonable rates. The Company is subject to the Commission's jurisdiction pursuant to S.C. Code Ann. §§ 58-3-140(A) and 58-5-210 (2015).

The Commission must determine a fair rate of return that the utility should be allowed the opportunity to earn after recovery of the expenses of utility operations. The legal standards for this determination are set forth in *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591 (1944) ("*Hope*") and *Bluefield Water Works and Improvement Co.*

*v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679 (1923) (“*Bluefield*”). In *Bluefield*, the United

States Supreme Court held:

What annual rate will constitute just compensation depends on many circumstances, and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting the opportunities for investment, the money market and business conditions generally.

*Bluefield*, 262 U.S. at 692-93.

The Commission and South Carolina appellate courts have consistently applied the principles set forth in *Bluefield* and *Hope*. See, *S. Bell Tel. & Tel. Co. v. Pub. Serv. Comm'n*, 270 S.C. 590, 244 S.E.2d 278 (1978). Quoting *Hope*, the South Carolina Supreme Court has stated:

Under the statutory standard of ‘just and reasonable’ it is the result reached not the method employed which is controlling. . . . The ratemaking process under the Act, i.e., the fixing of ‘just and reasonable’ rates, involves the balancing of investor and the consumer interests.

*S. Bell*, 270 S.C. 590, 596, 244 S.E.2d 278 281.

As Justice Ness further concurred, this Commission must exercise its dual responsibility of permitting utilities an opportunity to earn a reasonable return on the property it has devoted to serving the public, on the one hand, and protecting customers from rates that are so excessive as to be unjust or unreasonable, on the other, by

(a) Not depriving investors of the opportunity to earn reasonable returns on the funds devoted to such use as that would constitute a taking of private property without just compensation [, and] (b) Not permitting rates which are excessive.

*Id.* at 605, 244 S.E.2d at 286.

Additionally, the Commission's determination of a fair rate of return must be documented fully in its findings of fact and based exclusively on reliable, probative, and substantial evidence on the whole record. *See Porter v. S.C. Pub. Serv. Comm'n*, 332 S.C. 93, 98, 504 S.E.2d 320, 323 (1998). The Commission cannot decide an issue based upon surmise, conjecture or speculation. *See Herndon v. Morgan Mills, Inc.*, 246 S.C. 201, 209, 143 S.E.2d 376, 380 (1965).

#### **IV. RATE-MAKING METHODOLOGY**

Generally, the Commission has wide latitude to determine an appropriate rate-setting methodology. *Heater of Seabrook, Inc. v. Pub. Serv. Comm'n of S.C.*, 324 S.C. 56, 64, 478 S.E.2d 826, 830 (1996). In its Application, PWR requested rate base treatment. No party opposed PWR's request. PWR witness Burkett testified the Commission should continue to determine PWR's rates using a rate-of-return methodology. (Tr. p. 166.7). The Commission finds and concludes the use of rate base methodology to be appropriate here and will utilize rate base methodology in setting PWR's rates in this proceeding.

## **V. TEST YEAR**

S.C. Code Ann. Regs. 103-823(A)(3) (2012) requires the use of a historic twelve-month test period. The test year is established as the basis for measuring and calculating a utility's expenses, revenues, and return on rate base. *Porter v. S.C. Pub. Serv. Comm'n*, 328 S.C. 222, 228-29, 493 S.E.2d 92, 96. The Commission considers proposed rate increases based upon occurrences within the test year, but will also consider adjustments for any known and measurable changes outside of the test year. In its Application, PWR utilized the twelve months beginning January 1, 2020, and ending December 31, 2020, as its test year. (Application p. 2 of 53, ¶ 5). DCA and ORS applied the same historic test year. (Tr. p. 233.4; Tr. p. 240.2). Thus, the Commission finds and concludes that the test year beginning January 1, 2020, and ending December 31, 2020, is appropriate in this rate case.

## **VI. REVIEW OF THE EVIDENCE AND EVIDENTIARY CONCLUSIONS**

### **A. Issues Addressed under Stipulation**

The Partial Stipulation executed by ORS, the Company, and the DCA constituted a compromise resolution of all issues except for the authorized Return on Equity. Stipulation ¶ 3. Pursuant to the Stipulation, the Parties agreed to accept and adopt all recommendations, adjustments, and customer protections in the testimony and exhibits of ORS witnesses unless specifically modified by the Stipulation. Stipulation ¶ 4. The recommendations, adjustments, and customer protections in the testimony and exhibits of ORS witnesses accepted and adopted by the Parties include ORS's recommended adjustment related to the Company's allocation of corporate overhead and shared costs to

PWR discussed in ORS Witness Seale's Direct Testimony. *Id.*; (Tr. pp. 240.7-240.11). The Parties agreed to the correction in ORS Adjustment 3 regarding depreciation expenses described in ORS Witness Seale's Surrebuttal Testimony (Tr. p. 242.4) and revenue adjustments proposed by ORS based on the actual number of customers and equivalent residential customers by class as of the end of August 2021. Stipulation ¶ 4. The Company did not offer specific rebuttal testimony in opposition to these adjustments.

The Parties also agreed to the recommendation of ORS and the DCA to amortize rate case expenses over three years. *Id.*; (Tr. pp. 233.8, 235.4-235.5, 240.7, 242.2-242.4). The Company had requested two years. *Id.*; (Tr. pp. 168.4-168.5). The Parties further agreed the amount of rate case expenses to be amortized over three years is \$ 160,000. Stipulation ¶ 5.

In addition, the Parties agreed to amend Adjustment 2L to allow PWR recovery of the additional \$14,336 in chemical expenses requested in PWR Witness Burkett's Rebuttal Testimony. Stipulation ¶ 6; (Tr. p. 168.6). ORS had opposed the requested additional chemical expenses in Witness Seale's Surrebuttal Testimony. (Tr. p. 242.2).

Customer protections the Parties accepted under the Stipulation include those proposed by ORS Witness Garrett in his Direct Testimony related to the acquisition of Ni South Carolina, LLC (now Ni South Carolina, Inc.), the parent company of PWR, from Ni Pacolet Milliken Utilities, LLC by South Carolina Utility Systems (SCUS), a wholly-owned subsidiary of Southwest Utility System, Inc. ("the Acquisition"). *Id.*; (Tr. pp. 268.76-268.83). These customer protections discussed in Witness Garrett's testimony, also referred to as "ring-fencing provisions," include PWR not seeking recovery of any goodwill

associated with the Acquisition in future rate proceedings; PWR not seeking recovery of any acquisition or transaction costs associated with the Acquisition in future rate proceedings; PWR not assuming the role of guarantor for any debt of SWWC or its affiliates or subsidiary entities unless that debt is incurred for purposes specific to the PWR system and operations; that any debt incurred by PWR is and will only be used for purposes specific to the PWR system; and that PWR will not lend cash or other capital directly to SWWC or any SWWC affiliate or subsidiary entities except for routine and prudent cash management practices. *Id.* (Tr. p. 268.83). The Company did not offer specific rebuttal testimony in opposition to these recommended customer protections.

The Stipulation addressed two of the three components of PWR's cost of capital: capital structure and cost of debt. The Parties did not agree to an authorized ROE in the Stipulation. Under the Stipulation, the Parties agreed to capital structure for PWR that includes 45% debt and 55% equity. Stipulation ¶ 7. In its testimony, the Company recommended adopting its test period capital structure ratio of 40.08% debt and 59.92% equity. (Tr. p. 139.13). ORS Witness Garrett asserted the Company's proposed capital structure was too equity-rich and increased capital costs above a reasonable level. (Tr. p. 268.7). ORS recommended an imputed capital structure consisting of 50% debt and 50% equity, which was equal to the proxy group in this case. (Tr. p. 268.7). The debt ratio of PWR's parent company, SWWC, also influenced ORS's proposed capital structure ratio. (Tr. pp. 268.7, 268.73). DCA Witness Rothschild recommended a capital structure of 49.26% equity and 50.74% debt based on the average common equity ratios of the companies in his proxy group. (Tr. p. 194.34).

Regarding cost of debt, the Parties agreed to a value of 3.79% under the Stipulation. Stipulation ¶ 8. Company Witness Moul proposed a 3.79% cost of debt, based on the Mergent Bond Record for Baa-rated public utility bonds. (Tr. pp. 139.13-139.14). ORS did not recommend a different cost of debt. (Tr. p. 268.76). DCA Witness Rothschild recommended a 3.20% cost of debt in his Direct Testimony. (Tr. pp. 194.34-194.35). He updated his recommendation to 3.67% in his Surrebuttal Testimony to reflect the market yield of Baa rated corporate bonds between January 2021 and August 2021. (Tr. p. 196.15).

Regarding tariff language changes, the Company agreed to amend its Rate Schedule to remove Section 13—Limitation of Liability—and to amend the last paragraph of Section 1—Monthly Charge—to remove certain language as set forth in the Stipulation. Stipulation ¶¶ 10, 11. Additionally, the Parties agreed to PWR's request to amend Section 12 of its Rate Schedule to increase the maximum amount of its tampering charge to \$500. Stipulation ¶ 12. The DCA, through Witness Morgan's testimony, had opposed the increase in the maximum amount of the tampering charge. (Tr. pp. 233.14-233.15).

The Parties agreed to various fallout adjustments to reflect the terms of the Stipulation and the ROE granted by the Commission.

Finally, PWR agreed in the Stipulation that it would not file another general rate case before eighteen (18) months from the date the final order is issued in this proceeding, such that new rates would not be effective prior to twenty-four (24) months from the date the final order is issued.

ORS introduced into the record at the hearing an exhibit with Attachments B, C, and D showing the Operating Experience, Rate Base, and Rate of Return utilizing the terms

of the Stipulation and each of the three different ROEs recommended by Witnesses Moul, Garrett, and Rothschild in this proceeding. Hearing Ex. 8. Attachment A to this exhibit provided a summary of the revenue requirement and rates under the three different ROEs and the terms of the Stipulation. *Id.*

**B. Commission Finding**

The Commission, as the finder of fact, has carefully evaluated the evidence submitted in this case related to the issues resolved by the Stipulation. The Commission concludes that it is just and reasonable and a fair balancing of the interests of the Company and its customers to approve the Stipulation. No party opposes the Stipulation, and all Parties to this proceeding support it as a just and reasonable resolution of all issues within this proceeding except for the authorized ROE.

**C. Issue Not Included In Stipulation - Return on Equity**

**1. PWR's Position**

Company Witness Moul recommended a 10.95% ROE for PWR in this proceeding. (Tr. pp. 139.5-139.6). The witness used four different methods in determining his recommendation: Discounted Cash Flow (“DCF”), Risk Premium (“RP”), Capital Asset Pricing Model (“CAPM”), and Comparable Earnings (“CE”). (Tr. p. 139.4) His resulting cost of equity estimates were 10.41% for the DCF, 10.50% for the RP, 12.05% for the CAPM, and 12.80% for the CE. (Tr. p. 139.5). Based on these results, Witness Moul proposed an ROE of 10.95%, which was the rounded downward average of the market-based results of 10.99%. (Tr. pp. 139.5-139.6).

Mr. Moul offered that PWR's risk exceeds that of his proxy group due to its small size and lack of diversity. (Tr. p. 139.6) Mr. Moul claims that it is necessary to add a size adjustment to his CAPM method in order to account for the risk differential and to add a leverage adjustment to his DCF result when the market value and book value capital structures are different. (Tr. p. 139.23) Applying the models to his proxy group, and adding a leverage adjustment of 0.97% to his DCF result and a size adjustment of 1.02% to his CAPM result, Mr. Moul produced Cost of Equities ("COEs") of 10.41% (DCF), 10.50% (RP), 12.05% (CAPM) and 12.80% (CE). (Hearing Exhibit 5, p. 50 of 74).

In his Rebuttal Testimony, Witness Moul described a 9.5% ROE recently approved by the Commission for a much larger electrical utility as part of a comprehensive settlement agreement as a benchmark for this case. (Tr. pp. 141.5, 147-48). On redirect examination, Witness Moul agreed that a 9.5% authorized ROE for PWR would be reasonable given the state of the record in this proceeding. (Tr. pp. 161-62).

In his rebuttal, Witness Craig Sorenson testified in disagreement with the positions of ORS and the DCA, alleging their recommended ROEs would neither allow PWR to earn a fair and reasonable return on its investment relative to other regulated utilities nor allow PWR to attract capital (Tr. p. 75.5, lines 9-11). He also testified regarding PWR's operational, environmental, and customer service record in South Carolina and ROEs recently awarded to affiliates of PWR in this and other jurisdictions. (Tr. pp. 75.4-75.7). He testified that all of PWR's capital is provided through its parent company, SWWC, and that no other entity provides capital to PWR. (Tr. p. 88). Witness Sorensen was not proffered as an expert on the fair rate of return for a regulated utility, including its cost of

debt, return on equity, and capital structure. He also testified he has never been qualified as a rate of return expert and has never filed testimony evaluating the return on equity or cost of equity of a utility company. (Tr. pp. 77, 96). In response to a question about whether he was aware that the capital market factors that impact the cost of equity for all utilities, including PWR, have changed since PWR's last rate case, Witness Sorensen indicated he could not comment on that because he is not an expert. (Tr. pp. 96-97).

## **2. DCA's Position**

DCA Witness Rothschild applied the following three models to a proxy group of seven publicly traded water companies ("Water Proxy Group"): Constant Growth DCF; Non-Constant Growth DCF; and eight variations of CAPM. (Tr. p. 194.37, lines 14-18). Based on his analysis, Witness Rothschild recommended a cost of equity of 7.31% for PWR, within the range of 6.13% to 7.70% indicated by his analysis. (Tr. p. 194.3, line 19). Witness Rothschild testified that although the midpoint of his ROE range was a 6.92% cost of equity, he recommended 7.31% because it is prudent to not be overly abrupt while bringing ROEs in line with the true market-based cost of equity. (Tr. p. 194.5, lines 7-10). Witness Rothschild also testified that, contrary to Witness Moul's and Witness Sorenson's testimonies, the cost of equity should be based on current market data and set by investors' current expectations as indicated by market data at the time of the proceedings. (Tr. p. 196.16, line 15 — p. 196.17, line 5).

### 3. ORS's Position

ORS retained David J. Garrett to evaluate the cost of capital for PWR, relative to the current rate increase filing. (Tr. p. 268.6). Witness Garrett's opinion regarding capital structure and cost of debt were discussed above in the context of the Stipulation.

Witness Garrett testified that he employed two recognized methods applied to the proxy group of water utilities proposed by Witness Moul to calculate the Company's cost of equity. (Tr. pp. 268.10, 268.26-268.27). Witness Garrett testified that after applying the two methods he used, his corresponding findings were:

Methodology	Result
Discounted Cash Flow ("DCF")	8.0%
Capital Asset Pricing Model ("CAPM")	6.3%

Based on his DCF and CAPM results, Witness Garrett concluded that PWR's cost of equity is 7.1%, within a range of 6.3% to 8.0%. (Tr. p. 268.7). Witness Garrett testified the awarded ROEs for water utilities typically have exceeded the market cost of equity, despite the fact that those utilities are less risky than the average stock market portfolio. (Tr. p. 268.19). Witness Garrett testified the legal standards governing ROE do not mandate that the awarded ROE equate to the result of a particular financial model, but rather that the "end result" be just and reasonable under the circumstances. *See Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602-03 (1944); (Tr. pp. 268.7, 268.11-268.12). He further testified "an awarded ROE that is set too far above a regulated utility's cost of equity runs the risk of being at odds with the standards set forth in *Hope and Bluefield*." (Tr. pp. 268.11-268.12). He ultimately recommended the Commission award PWR an authorized

ROE of 8.9%. *Id.* He based this recommendation on the concept of gradualism to lessen potential rate shock for the Company and its investors. (Tr. pp. 268.12- 268.13). While 8.9% is above PWR's market-based cost of equity, Garrett states that this represents "a gradual yet meaningful move towards market-based cost of equity." (Tr. p. 268.7). The witness provided no other evidentiary basis for the 8.9% ROE recommendation.

However, in his Surrebuttal Testimony, Witness Garrett addressed several issues raised in PWR Witness Moul's Rebuttal, including the capital structure, growth rate inputs to the DCF model, the CAPM results, and Company Witness Moul's leverage adjustment. Witness Garrett also responded to aspects of Company Witness Sorenson's Rebuttal Testimony discussing ROE. Regarding Company Witness Moul's criticisms of the growth rate used in Witness Garrett's DCF analysis, Mr. Garrett testified that Mr. Moul's Rebuttal Testimony is difficult to reconcile because Mr. Garrett conducted his DCF model using Mr. Moul's growth rate assumptions. (Tr. pp. 272.3-272.4). Witness Garrett's analysis demonstrates that when Moul's growth rate assumptions are used in the DCF Model, the resulting cost of equity is 8.0%, even if PWR's proposed growth rate is included. (Tr. p. 272.4).

While Mr. Rothschild and Mr. Garrett disagreed on the ROE this Commission should authorize, their analyses showed a consistency of outcomes regarding PWR's market-based cost of equity, and each presented substantial testimony and evidence to aid the Commission in making a determination on this issue. The results of Mr. Garrett's and Mr. Rothschild's cost of equity models (i.e., DCF and CAPM) produce similar results despite having some different characteristics. For example, Mr. Garrett does not use the

sustainable growth form of the Constant Growth DCF model as used by Mr. Rothschild. However, independently, Mr. Garrett concluded that a long-term growth rate of 6.3% was reasonable. (Tr. p. 268.45). This growth rate is almost identical to the long-term growth rates (6.27% and 6.53%) produced by Mr. Rothschild's calculations. (Hearing Exhibit 7, p. 9 of 24). Additionally, Mr. Rothschild's Constant Growth DCF results range between 8.05% and 8.15%, while Mr. Garrett's DCF model cost of equity estimate is 8.0%.

Regarding the CAPM, Mr. Garrett's and Mr. Rothschild's methodologies are different in just about every way except for some overlap with the risk-free rate component. Both use a risk-free rate based on the market yield of U.S. Treasuries. (Tr. p. 268.50). Mr. Rothschild and Mr. Garrett explain that it is not appropriate to use forecasted interest rates as the risk-free rate component of the CAPM, as Mr. Moul has done. (Tr. pp. 194.58-194.60 and Tr. pp. 268.65-168-66). The equity risk premium and beta portions of Mr. Rothschild's CAPM are based on an analysis of stock option data, which measures investor expectations directly. Mr. Rothschild also incorporates historical betas based on a regression analysis. The equity risk premium portion of Mr. Garrett's CAPM is based on expert surveys and the implied equity risk premium as indicated by the current value of all stocks (the index price), and the projected value of future cash flows. (Tr. p. 268.56). Despite these differences, Mr. Rothschild's CAPM results range between 6.04% and 7.25% and Mr. Garrett's CAPM is 6.3%. (Tr. p. 268.58). The fact that each expert obtained similar results, despite these modeling differences, gives the Commission confidence that the results are reasonable, reliable, and in line with the true cost of equity.

While we find Mr. Garrett's ROE range to be reasonable and reliable because it is supported by his analysis, we are concerned that his 8.9% ROE recommendation is unsupported. The primary basis for his recommendation is the finding in *Hope* that "[u]nder the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling." (Tr. pp. 268.11 – 268.12). He also speculates that "a significant, sudden change" in ROE "could" increase the Company's risk profile which he claims "could" contravene the findings in *Hope*. (Tr. p. 268.12). Otherwise, Mr. Garrett is unable to provide adequate justification for his specific 8.9% recommendation. Under cross-examination he was not able to explain how he determined the 8.9% recommendation or whether another ROE would meet his concept of gradualism. When asked how he reached his particular recommendation, instead of another such as 8.2% or 9.2%, he stated it was "not directly tied to the result of a specific model, but just based on [his] judgment." (Tr. p. 290, lines 10-12). While Mr. Garrett did not justify his specific ROE, he did note his 6.3% to 8.0% ROE was "accurate from a technical standpoint". (Tr. p. 291, lines 7-17).

#### **4. Rothschild's and Garrett's Criticisms of Moul**

Mr. Garrett and Mr. Rothschild use data up to September 1, 2021, and August 31, 2021, respectively. (Rothschild Dir., Exhibit ALR-3, p. 1; Hr'g Ex. 7, p. 9. Garrett Dir., Exhibit DJG-3; Hr'g Ex. 15, p. 104 of 118). Rothschild criticizes Moul's dataset as not up to date and we agree. Despite Mr. Moul's recommendation that the Commission consider the future trend in capital cost rates, (Tr. p. 141.6) he does not use the most current market data (e.g., stock prices, interest rates). His analysis only includes data up to April 30, 2021,

despite filing his testimony on September 2, 2021. Mr. Rothschild stated “[t]his is particularly concerning because water utility stock prices have significantly increased over that time period (up 25.9% in the six-month period of March through August 2021) indicating a lower cost of equity.” (Tr. pp. 194.6 – 194.7). Rothschild further shows the proxy group water utility stocks outperformed the overall market during that time, indicating the cost of equity has likely been decreasing. (Tr. p. 194.17). Therefore, we find Mr. Moul’s recommendation is not credible, because, among other reasons, it is based on out-of-date information.

We further agree with Mr. Rothschild and Mr. Garrett that Mr. Moul’s 0.97% leverage adjustment is not appropriate. (Tr. p. 194.7; Tr. pp. 268.14 – 268.15). Mr. Moul has proposed a leverage adjustment of 0.97% to his DCF-derived cost of equity, stating “[i]n order to make the DCF results relevant to the capitalization measured at book value (as is done for rate setting purposes), the market-derived cost rate must be adjusted to account for the difference in financial risk.” (Tr. p. 139.23). He claims that “[b]ecause the rate-setting process uses ratios calculated from a firm’s book value capitalization, further analysis is required to synchronize the financial risk of the book capitalization with the required return on the book value of the firm’s equity.” (Tr. 139.24). Mr. Rothschild explains that investors understand that authorized ROEs are applied to book value and Mr. Moul’s proposed leverage adjustment implies that investors do not know how regulation works. He notes investors decide how much they are willing to pay for a stock based on the earnings and dividends they expect to receive. (Tr. pp. 194.94 – 194.96). Mr. Garrett finds that applying the Hamada formula used by Mr. Moul to calculate his leverage

adjustment “can be a valuable exercise in certain applications,” but “Mr. Moul distorts this process in an attempt to justify adding nearly 100 basis points to his DCF cost of equity estimate.” (Tr. pp. 268.47 – 268.48). Based on these testimonies, we find the result of a DCF analysis does not need to be adjusted to account for the regulatory process.

We also agree with Mr. Rothschild and Mr. Garrett that Mr. Moul’s 1.02% size adjustment is not appropriate. (Tr. pp. 268.14 – 268.15). PWR is considerably smaller than the average size of the publicly traded water companies in the proxy groups used by all three rate of return witnesses. (Tr. p. 139.7). Mr. Moul claims, “all other things being equal, a smaller company is riskier than a larger company because a given change in revenue and expense has a proportionately greater impact on a small firm.” (Tr. pp. 139.7 – 139.8). Mr. Moul states that technical literature from the 1980s and 1990s supports his claim that PWR’s COE should be increased by 1.02% because it is smaller than the water companies in his Water Group. (Tr. pp. 139.35 – 139.36). Mr. Moul uses data from the 2017 SBBI Yearbook to calculate his recommended 1.02% size premium. (Tr. pp. 139.35 – 139.36; *See also* Moul Dir. Exhibit PRM-1, Schedule 13, p. 3; Hr’g Ex. 5, p. 71 of 74). Mr. Rothschild counters Moul’s literature, noting the 2021 SBBI Yearbook states the following regarding the theory that investors require higher returns to invest in smaller firms:

The size effect is not without controversy, nor is this controversy something new. Traditionally, small companies are believed to have greater required rates of return than large companies because smaller companies are inherently riskier. It is not clear, however, whether this is due to size itself, or to other factors closely related to or correlated with size...

(5 Ibbotson SBBI® 2021 Classic Yearbook, page 7-2. Also see, Rothschild Dir., p. 98, lines 8-15; Tr. p. 194.98).

Rothschild also notes a 2018 study conducted by scholars at AQR Capital Management and Yale University found that “the size effect diminished shortly after its discovery and publication.” (Tr. p. 194.99). This study found that data errors plagued early studies and did not include delisted companies, concluding the biased data (referred as a “delisting bias”) made the returns of smaller stocks look higher than reality. Mr. Garrett makes a similar assessment of the size adjustment used by Mr. Moul and recommended the Commission reject the arbitrary size adjustment proposed by Mr. Moul. (Tr. pp. 268.62 – 268.64). In light of this recent data cited by Mr. Rothschild and Mr. Garrett, the Commission finds Mr. Moul’s conclusion that smaller firms require a higher COE is not supported by the evidence.

Additionally, testimony shows that PWR is owned by a much larger company, SWWC, with financial backing from the Infrastructure Investments Fund. (Tr. p. 92, lines 1-2). Mr. Sorensen testified this fund is “the shareholder” of PWR. Mr. Sorensen also indicated the Infrastructure Investments Fund is advised by J.P. Morgan. (Tr. p. 94, lines 23-24). Mr. Moul was also aware the Infrastructure Investments Fund is an investor in SWWC. (Tr. p. 146, line 18 – p.147, line 7).

Therefore, based on the greater weight of the evidence presented in this case, the Commission finds that a size adjustment is not appropriate.

## **5. PWR's Response to Rothschild and Garrett**

PWR argues the ROEs proposed by Mr. Rothschild and Mr. Garrett are too low for four primary reasons: a) its inability to raise capital with a low ROE; b) analytical differences among the experts; c) recently authorized ROEs; and d) its good performance. We address each of these issues below and find neither Mr. Moul's nor Mr. Sorensen's testimony provides compelling evidence to support their criticisms.

### *a. Inability to Raise Capital is Unfounded*

As an engineer and president of SWWC's business in Alabama, Florida, and South Carolina, as well as PWR, Mr. Sorensen is qualified to discuss the Companies' operations and expenses. However, he was not qualified as a rate of return expert like the other witnesses in this matter. Furthermore, the only evidence he presented to support his opinions regarding the appropriate rate of return was that other companies have been authorized higher ROEs and therefore, PWR would be disadvantaged. A witness's opinion is of no probative value if "there is no evidentiary showing of the facts upon which the opinion is predicated." *Parker v. South Carolina Public Service Com.*, 281 S.C. 215, 217, 314 S.E.2d, 597, 599 (1984).

Mr. Sorensen's opinion was also refuted by Mr. Rothschild and Mr. Garrett. (Tr. p. 272.14). Mr. Rothschild provided examples of recent authorized and proposed returns under 8%, including two financially healthy electric utilities in Illinois - 7.36% for Ameren Illinois and ComEd. When asked on cross-examination whether Ameren Illinois and ComEd are able to raise capital, Mr. Moul replied he thought they could and that he had "not heard they have any difficulty in that regard." (Tr. p. 145, lines 14-18.) Mr. Moul was

also not surprised that Ameren Illinois raised \$350 million in debt offered in June 2021. (Tr. p. 145, lines 19-22).

In Figure 2 to his testimony, ORS Witness Garrett illustrated that the average authorized ROE for regulated electric and gas utilities is approximately 9.5%. (Tr. p. 268.20, Figure 2). DCA Witness Rothschild presented testimony that Ameren Illinois and ConEd remain financially healthy (e.g., investment grade credit rating) with authorized ROEs of 7.36%. (Tr. p. 194.8). These ROEs are significantly lower than the average presented by Mr. Garrett and indicate that the market-based COE is lower than the average authorized ROEs. DCA witness Rothschild explained that if the market-based COE for electric and gas utilities was significantly higher than 7.36%, Ameren Illinois and ComEd would likely not be able to maintain an investment grade credit rating and their parent companies' market capitalization would suffer. (Tr. pp. 196.16-196.19). However, this is not the case. We recognize that Ameren Illinois' and ConEd's rates are set based on formula ROEs and therefore may not be completely comparable to other jurisdictions that do not use "formula rates," including South Carolina. However, the fact that a recent survey showed the 50<sup>th</sup> percentile of equity return expectation of major financial institutions is 6.9% for the overall market indicates that a ROE of less than 9.5% for a regulated utility company is more than sufficient to raise the capital needed to provide safe and reliable service. (Tr. p. 194.6, Table 2).

Mr. Sorensen's rebuttal testimony also shows one of PWR's affiliates, Ni Florida, Inc., has an authorized ROE range with a low end of 7.85%. (Tr. p.75.4). Notably, Mr. Sorensen testified that all of PWR's capital comes from its parent company, SWWC. (Tr.

p. 88, lines 13-20). He also stated the Infrastructure Investments Fund is “the shareholder of [SWWC].” (Tr. p. 92, lines 1-2). Mr. Sorensen also indicated the Infrastructure Investments Fund is advised by J.P. Morgan. (Tr. p. 94, lines 23-24). Mr. Sorensen testified during the hearing to the ROEs granted to each of PWR’s affiliates, afterward stating “if the Commission were to ...award [PWR] a lower ROE than we were granted in our other jurisdictions, it would put [PWR] at a distinct disadvantage in attracting the capital necessary to operate, maintain, improve, [and] expand[] its system.” (Tr. p. 70, lines 7-16). It appears to the Commission that the Company is competing with its affiliates for capital from its parent company. Regulated utilities have an obligation to serve all of their customers and to provide them safe and reliable service. *See* S.C. Code Ann. Reg. 103-540.

The authorized ROE will impact the return on the investment, but it will not impact rate base or the recoverability of operating expenses. PWR will recover its prudently incurred costs in providing that service. We acknowledge the Commission also has an obligation to provide the Company and its investors with an opportunity to earn a reasonable return. The evidence in this matter shows an ROE of 8.0% is “reasonably sufficient” and “adequate” to satisfy *Hope* and *Bluefield*.

*b. Analytical Concerns Refuted by Market Data*

Mr. Moul claims Mr. Garrett’s and Mr. Rothschild’s proposed ROEs do not “fit the trend in capital costs on a prospective basis” because they do not reflect higher capital costs. (Tr. pp. 141.5 – 141.7). We are not persuaded by this claim. The cost of equity model results of Mr. Garrett and Mr. Rothschild reflect capital costs on a prospective basis. (Tr.

pp. 194.15, 272.6). Both use current capital market data in their cost of equity models, including stock prices and the current market yield of U.S. Treasury Bonds. Mr. Moul claims the current market yields on government bonds are “backward-looking” and interest rate forecasts are required. (Tr. p. 141.6). However, the interest rate forecasts proposed by Mr. Moul are not reliable for determining PWR's authorized ROE for at least two reasons. First, Mr. Rothschild testified that “[t]he non-market-based interest rate forecasts used by Mr. Moul are not only irrelevant because they are not consistent with investor expectations, they also have been consistently inaccurate for decades.” (Tr. p. 192, lines, 8-12; see also, Tr. pp. 194.58 – 194.60). Second, a direct observation of investor expectations obviates the need for interest rate forecasts. We agree with Mr. Rothschild who relies upon current market data to provide a direct observation of investor expectations, including what investors expect interest rates will be in the future. (Tr. p. 194.58). Mr. Moul uses non-market data such as economists’ projections, interest rates, and analysts forecasts. (Tr. p. 191, lines 3-7) Further, Mr. Rothschild testifies that:

It is important to recognize that current long-term Treasury bond yields represent a direct observation of investor expectations and **there is no need to use “expert” forecasts** such as Blue Chip to determine the appropriate risk-free rate to use in a CAPM analysis or any other cost of equity calculations.

Tr. p. 194.58, lines 18-21 (emphasis added). The Commission finds that there is simply no need for “expert” forecasts when investors’ expectations can be measured directly. (Tr. pp. 194.58-194.60.)

Mr. Moul also claims the current level of the Market Volatility Index (VIX) “warrants a higher equity return at this time because the higher stock market volatility

signifies higher risk that requires higher returns on compensation for the higher risk.” (Tr. p. 141.8). Mr. Rothschild and Mr. Moul both agree that investors’ volatility expectations as measured by the VIX increased significantly during the pandemic and remain somewhat elevated when compared to pre-pandemic levels. (Tr. p. 194.23, lines 1-7). However, Mr. Rothschild states that the cost of equity cannot be calculated from volatility expectations alone: “investors’ expectations regarding the co-variance between water utility stocks and the overall market are more relevant to cost of equity than volatility expectations alone.” (Tr. p. 194.33, lines 15-17).

Other factors indicate that the cost of equity for water companies is lower than before the pandemic. Mr. Rothschild showed that option-implied betas for water utility stocks have decreased to levels below those before the pandemic (0.69 on August 31, 2021 vs. 0.79 on December 31, 2019). (Tr. pp. 194.17 – 194.19; Tr. pp. 194.33 – 194.34). This indicates investors expect water utility stock price movements to be less correlated with the overall market than before the pandemic and therefore to be less risky relative to the market. (Tr. pp. 194.18, line 22 – 194.19, line 2).

The testimony of Mr. Garrett establishes that authorized ROEs for regulated utility companies have been declining nationally, but the market-based cost of equity has been declining faster. (Tr. pp. 268.19 – 268.22). The testimonies of Mr. Rothschild and Mr. Garrett explain that the equity return expectations of major brokerage houses, financial institutions, and consulting firms indicate PWR’s market-based COE is significantly less than the 10.95% requested by the Company. (Tr. pp. 194.5 - 194.6; Tr. pp. 268.19 - 268.22 and 268.56 - 268.57). For example, Duff & Phelps, a respected source regularly relied

upon by rate of return witnesses, including Mr. Moul, published a cost of equity of 8% for the overall market. (Tr. p. 194.6). A recent survey indicates that banks and pension funds expect a return on equity investments over the next 20 years of between 4.6% and 8.9%, with a 50th percentile of 6.9%. (Tr. pp. 194.5 - 194.6). PWR is less risky than the market as a whole; therefore, its cost of equity is certainly less than these return expectations. (Tr. pp. 268.19 – 268.22 and 268.31 – 268.34).

*c. Other Authorized ROEs are Not Precedent Setting*

The Company argues the Commission’s past ROE authorizations for an applicant, or another utility, are precedent in the current case. (Tr. pp. 219 – 220 and 310 – 314). We disagree as those ROEs do not reflect the cost of equity at this time. The testimony in this matter provides current investor expectations regarding returns.

The ROEs cited by the Company are based on past testimonies and therefore are not necessarily representative of current capital market conditions. (Tr. p. 194.10). The Company notes the higher ROEs authorized for one of its affiliates, Palmetto Utilities, Inc. (“PUI”), as well as Dominion Energy South Carolina; however, those applications were filed in December 2019 and August 2020, respectively. The data provided in those cases included COVID’s significant impact on the economy and appropriately reflected increased market volatility, uncertainty, and risk. Furthermore, DESC is an electric and gas company, whose risks and uncertainties do not correspond with those of PWR. Notably, in the current case, all of the experts used water companies in their proxy groups, and none used electric utilities. Additionally, the PUI and DESC awarded ROEs were the results of settlements. Therefore, their ROEs cannot be singled out as precedent for other cases

because settlement negotiations involve compromises on individual issues that cannot be compared to other cases in isolation.

Even if these past ROEs set precedent for the current matter, the Commission is not bound to follow them. *S. Bell Tel. & Tel. Co. v. Pub. Serv. Comm'n*, 270 S.C. 590, 610, 244 S.E.2d 278, 288 (1978) (Ness, J., concurring in part and dissenting in part) (noting the Commission is "not bound by its prior decisions, and it may re-examine and alter its previous findings as to reasonableness when conditions warrant"); *See also*, 73A C.J.S. Public Administrative Law and Procedure § 352 (June 2021 Update) (agencies are not bound by past precedent and may reevaluate past decisions if there is a rational justification). While the Commission, as an administrative agency, "is generally not bound by the principle of *stare decisis*[,] it cannot act arbitrarily in failing to follow established precedent" and should cite distinguishing factors. *330 Concord St. Neighborhood Ass'n v. Campsen*, 309 S.C. 514, 517–18, 424 S.E.2d 538, 539–40 (Ct App. 1992). In this matter, there is substantial evidence in the record to show the current cost of equity supports an ROE in the range of 6.13% to 8.0%.

*d. Past Performance Does Not Justify an ROE Above the COE*

PWR argues its "exceptional performance" entitles it to a higher ROE than other utilities. (Tr. p. 86, lines 8-19). In particular, during cross-examination, PWR focused on the decision in the 2019 Blue Granite rate case (Order No. 2020-306; Docket No. 2019-290-WS), indicating it would be punitive to award PWR an ROE lower than 7.46%, which was set in part as an incentive for Blue Granite to improve performance. As already noted, our prior ROE authorizations, particularly those based on market data that is not current,

are not precedent setting. Further, as indicated by the South Carolina Supreme Court, “a utility's business practices and reputation are two of a number of factors the PSC may consider in selecting an appropriate ROE.” *See In re Blue Granite Water Co.*, 434 S.C 180, 193, 862 S.E.2d 887, 893-894 (2021). While we did consider the poor performance of Blue Granite, we also considered the market-based cost of equity findings of the experts who testified. Many of the factors considered in the *Blue Granite* matter also apply here and are supported by the testimonies of Mr. Garrett and Mr. Rothschild, including: “the ROEs and overall rate increases allowed to other similarly-sized utilities in the same general time frame”; “the ROEs expected by investors in the overall (i.e., riskier) stock market”; “the apparent lack of a need to artificially inflate the ROE of relatively-smaller utilities”; “the overall decreased cost of equity for utility companies”; and a “decline in investor expectations of equity returns and risk premiums.” (*Id.*, at n. 6).

Mr. Garrett testified that the market-based cost of equity should be the most important factor. (Tr. p. 268.51, lines 18-19). The importance of performance is “extremely low compared to cost of equity.” (Tr. p. 323, lines 5-15). He also testified that awarded ROE averages and ROEs granted in other jurisdictions should be given much less weight than the COE estimates provided by experts. (Tr. p. 302, line 24 – p. 303, line 3). In this case, when other factors support an ROE between 6.13% and 8.0%, we agree.

The evidence in this record supports that PWR is a well managed company. At the public hearing only one customer appeared, and she had no service-related complaints. (Tr. pp. 71, line 19-72, line 25). PWR has had no serious environmental issues, and it has contributed to the betterment of its service territory. Although the Company’s high quality

of service should not be taken for granted and, indeed, should be recognized, the Commission must determine a rate of return based on the record of this case. We believe that an 8.0% rate of return on equity is the highest rate of return that we can approve, based on the evidence before us, as explained below.

**D. ROE Conclusions**

As this Commission has often stated, “[i]t is the responsibility, duty and delegated charge granted by the Legislature for the Commission to weigh the evidence and to draw ‘the ultimate conclusion therefrom as to what return is necessary to enable a utility to attract capital.’” *S. Bell Tel. & Tel. Co. v. Pub. Serv. Comm'n*, 270 S.C. 590, 597, 244 S.E.2d 278, 282 (1978), holding modified by *Parker v. S.C. Pub. Serv. Comm'n*, 280 S.C. 310, 313 S.E.2d 290 (1984).

Based on the testimony and evidence presented, we find the testimony of Mr. Rothschild and Mr. Garrett more reliable and credible than that of Mr. Moul. Mr. Rothschild’s and Mr. Garrett’s objective analyses more accurately reflect PWR’s cost of equity. Notably, the two witnesses independently came to a similar range for the cost of equity. In comparison with Mr. Moul, we find their models more credible due to the absence of artificial and unsupported adjustments. Mr. Rothschild’s detailed testimony regarding his use of both historical and forward-looking market-based data provided a comprehensive and transparent analysis of the cost of equity. (Tr. pp. 194.35 – 194.84). Mr. Rothschild and Mr. Garrett effectively rebutted Mr. Moul’s testimony and refuted any criticisms he made of their methods. (Tr. pp. 194.85 – 194.103 and 196.3 – 196.20). Mr. Moul was unable to convincingly refute criticisms of his testimony.

The evidence presented clearly establishes that Mr. Moul's recommendation of 10.95% is too high and an ROE within the ranges presented by Mr. Rothschild and Mr. Garrett, 6.13% to 8.0%, is more appropriate. We find the evidence in the record does not support an authorized ROE that is not within this range. Due to the lack of evidence in the record, the Commission finds that any ROE above 8.0% is not supported by the weight of the evidence. On the other hand, we are confident, based on the weight of the evidence presented that an ROE of 8.0% is market-based, meets the requirements of *Hope* and *Bluefield*, and capable of meeting investors' expectations. By modeling the DCF formula using the known inputs of stock price and dividends and the same growth rate as witness Moul, witness Garrett's DCF model produced a cost of equity estimate of 8.0%. (Tr. p. 141.19)

Witness Garrett's recommended 8.9% was attributed to the use of "gradualism" to lessen potential rate shock for the Company and its investors. (Tr. pp. 268.12-268.13).

Witness Garrett further described the use of gradualism as follows:

The ratemaking concept of "gradualism," though usually applied from ratepayers' standpoint to minimize rate shock, can also be applied illustratively to shareholders. An awarded return of 7.1% in the current rate proceeding may represent a substantial decrease from historic ROEs. However, as I prove later in my testimony, awarded ROEs in many jurisdictions, including South Carolina, exceed market-based costs of equity for utilities. While generally reducing awarded ROEs for utilities would move awarded returns closer to market-based costs, I believe it is advisable to do so gradually. One of the primary reasons PWR's actual cost of equity is so low is because PWR is a low-risk investment. In general, utility stocks are low-risk investments because movements in their stock prices are not volatile. If the Commission were to make a significant, sudden change in the awarded ROE anticipated by

stockholders, it could have the undesirable effect of notably increasing the Company's risk profile, which could be in contravention to the Hope Court's "end result" doctrine. An awarded ROE of 8.9% represents a good balance between the Supreme Court's indications that awarded ROEs should be based on cost, while also recognizing that the end result must be just and reasonable under the circumstances. An awarded ROE of 8.9% represents a relatively gradual, yet decisive move toward PWR's market-based cost of equity, while still providing PWR's shareholders with the opportunity to earn a return that is more than 100 basis points above PWR's market-based cost of equity (8.9% vs. 7.1%).”

(Tr. pp. 268.12-268.14)

Garrett’s use of the gradualism concept is certainly interesting from a policy standpoint in this matter. However, the 8.9% ROE did not undergo the same rigorous scrutiny that Mr. Garrett applied to his DCF analysis when arriving at an 8.0% rate of return on equity at the high end of his range. While gradual movement towards market-based cost of equity may be reasonable economic policy, there is no evidentiary basis for the precise 8.9% number used by Mr. Garrett. He has not recommended a number derived from the cost of equity analyses generally employed by rate of return analysts. The 8.9% number is simply without support in the record. Although *Hope* and *Bluefield* state that it is the result that matters, not the methodology, there must be evidence of record to support a conclusion, which is lacking in the 8.9% recommendation ROE. We find the concept of gradualism alone is not sufficient support in this case.

Although Mr. Garrett stated that he considered additional factors other than the cost of equity, as noted in the *Blue Granite* case, when making his 8.9% cost of equity recommendation, he provides no quantification for the Commission to examine as

explained above. (Tr. p. 268.14). Accordingly, the 8.9% return on equity is without credible or sufficient evidentiary support.

**1. DESC Electric and Gas Rate Case Settlement 9.5% ROE Does Not Apply**

Witness Moul stated that the ROE of 9.5% was a “benchmark for this case.” (Tr. p. 147) (Moul had originally made the same statement in his rebuttal testimony). On redirect examination, Counsel for PWR asked Mr. Moul a series of questions regarding the applicability to this case of a 9.5% rate of return on equity reached in a settlement agreement approved by the Commission in the DESC rate matter. *See* Docket No. 2020-125-E. Mr. Moul agreed that the 9.5% rate of return on equity approved in the DESC case would be reasonable in the PWR case. He explained that “even though this equity return was established for a combination electric and gas utility, it provides a meaningful point of reference in this case for PWR. The 9.5% return that was granted in November 2020 reflects capital market fundamentals that are not dissimilar to today.” (Tr. p. 141.5).. Moul also stated “that would not be an unexpected outcome for the resolution of this case in the minds of investors.” And further, Moul noted with regard to the 9.5% ROE that “I think investors would be receptive to that.” (Tr. p. 162).

Without more information comparing the characteristics of DESC with PWR, the conclusion that the same rate of return on equity adopted for DESC could be applied to PWR is untenable. As pointed out in the testimony, DESC is a combination electric and gas utility, while PWR is a wastewater utility. This dissimilarity was pointed out in the testimony of the witnesses. The evidence did not show similar characteristics so as to allow

this Commission to adopt the comparison that the 9.5% rate of return approved in the DESC case was indeed a “benchmark” for the present case.

Our position is supported by *Heater of Seabrook, Inc. v. Public Service Commission of South Carolina*, 332 S.C. 20, 503 S.E. 2d 739 (1998) (c.f. . The Commission Order in the *Heater of Seabrook* case had referred to Carolina Water Service, another water and sewer utility, as the comparison standard in the evaluation of Heater of Seabrook’s rate case. (Docket No. 93-737-WS, Order No. 97-251, at p. 3). The South Carolina Supreme Court pointed out that there was no evidence in the record giving any information about Carolina Water Service. The Court held that this lack of information made it impossible for an appellate court to afford meaningful review to any comparison findings regarding Heater of Seabrook. The Court also noted that the same reasoning applied to the Commission’s reference in its Order to “other similarly situated utilities.” We believe that the same reasoning applies to the attempt to compare the rate of return on equity of Dominion Energy to the rate of return of PWR. There is no evidence in the record giving any information about Dominion Energy, other than the fact that it is a combination electric and gas utility which recently had a rate case before the Commission resulting in the Commisison approving a comprehensive settlement agreement which included settlement of the issue of ROE. There are no other facts which would allow a comparison of other characteristics of Dominion Energy with PWR as regards the rate of return on equity. As in Heater, without more similarities between the companies established in the record, the Commission cannot accept Mr. Moul’s conclusion that the companies are comparable for the Commission to use the rate of return established in the DESC rate case for the case at

bar. *See Utility Services of South Carolina, Inc. v. South Carolina Office of Regulatory Staff*, 392 S.C. 96, 114, 708 S.E. 2d 755, 765 (2011) (“We have held on several occasions that it is improper for the PSC to draw comparisons with other entities without stating its basis for finding the entities sufficiently similar for comparison purposes.”). We find that the appropriate cost of equity in this case is 8.0%.

## **VII. TARIFF MODIFICATIONS**

In PWR’s last rate case, Docket 2018-82-S, the Commission approved a tampering charge not to exceed \$250. (Order No. 2019-314, p. 15). PWR proposes to modify the language in its tariff increasing the tampering charge up to \$500. (Application, p. 2, ¶ 5). ORS did not object to the proposal. DCA witness Morgan objected to the charge because the Company could show only one instance “involving tampering, damage or vandalism for 2018 through 2021.” (Tr. pp. 233.14 – 233.15). Therefore, Mr. Morgan recommended the tampering charge be limited to \$250. (Tr. p. 233.15). PWR notes the proposed charge has been approved by the Commission for at least one other jurisdictional utility, serves as a deterrent, and benefits other customers as it shifts costs to the persons or entities causing such damage. (Application, p. 4, ¶ 14). This modification is agreed to by the parties in the partial stipulation and adopted by the Commission. (Partial Stipulation, p. 6, ¶ 12; Hearing Exhibit 2, p. 6).

The partial stipulation also indicates PWR has agreed to remove Section 13-Limitation of Liability from its Rate Schedule. (Partial Stipulation, p. 5, ¶ 10; Hearing Exhibit 2, p. 5). The current language limits the Company’s liability to customers in circumstances where there is an interruption of service to “those remedies provided in the

Commission's rules and regulations governing wastewater utilities." (Application Exhibit A, p. 6, ¶ 13). Therefore, the current tariff language may prevent customers from being made whole or bringing a civil action to recover damages resulting from an interruption of service. Based on these findings and the agreement of the parties, the Commission adopts the removal of Section 13.

Finally, the partial stipulation indicates PWR has agreed to remove language in Section 1- Monthly Charge that would allow it to refuse service to a customer that is current on their account due to another account being delinquent in the same multi-unit building. (Partial Stipulation, p. 5, ¶ 11; Hearing Exhibit 2, p. 5). The Commission also approves and adopts this tariff modification.

### **VIII. ACCOUNTING ADJUSTMENTS**

In the Partial Stipulation, the parties agreed to the recommendations, adjustments, and customer protections in the testimony and exhibits of ORS witnesses, unless specifically modified by the Partial Stipulation. (Partial Stipulation p.4, ¶ 4; Hearing Exhibit 2, p. 4). The Commission adopts and approves the adjustments which are supported by evidence of record as set forth in ORS's testimony and the Partial Stipulation as discussed below, including, but not limited to, the following:

- ORS's recommended adjustment related to the Company's allocation of corporate overhead and shared costs- (ORS's proposed adjustment to PWR's Adjustment 2I – Miscellaneous Expenses)
- ORS's recommended adjustment to amortize rate case expenses over three (3) years -(ORS's proposed adjustment to PWR's Adjustment 2G – Rate Case

Expenses). The parties agree that the amount of rate case expenses to be amortized over three (3) years is \$160,000.

- ORS's correction in depreciation expense (Adjustment 3) of \$5,702 as described by ORS Witness Seale's Surrebuttal Testimony<sup>2</sup>;

- The Parties agree to amend Adjustment 2L, to allow PWR recovery of the additional \$14,336 in chemicals expense requested by PWR witness Burkett's Rebuttal Testimony.

- The Parties agree to various fallout adjustments to reflect the terms of the Partial Stipulation and the return on equity granted by the Commission;

- ORS's revenue adjustments based on the actual number of customers and equivalent residential customers by class as of the end of August 2021.

#### **IX. RING-FENCING (CONSUMER PROTECTIONS)**

In the Partial Stipulation, the parties also agrees to several ratepayer protections recommended by ORS Witness Garrett which related to SCUS's acquisition of Ni South Carolina, LLC (now Ni South Carolina, Inc), the parent company of PWR, from Ni Pacolet Milliken Utilities, LLC. These ring-fencing provisions are

- (1) PWR will not seek recovery of any goodwill associated with the Acquisition in any future rate proceedings;

- (2) PWR will not seek to recover any acquisition or transaction costs associated with the Acquisition in any future rate proceedings;

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<sup>2</sup> See Hearing Exhibit No. 12, Surrebuttal Exhibit No. CLS-3.

(3) PWR will not in any way be the guarantor of any debt for SWWC or any SWWC affiliate or subsidiary entities unless the debt is incurred for purposes specific to the PWR system and operations;

(4) Any debt incurred by PWR is and will only be used for purposes specific to the PWR system; and

(5) PWR will not lend cash or any other capital directly to SWWC or any SWWC affiliate or subsidiary entities except for routine and prudent cash management practices.

#### **IX. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the discussion as set forth herein, and the record of the instant proceeding, the Commission makes the following Findings of Fact and Conclusions of Law:

1. PWR is a public utility as defined in S.C. Code Ann. § 58-5-10(4). It provides sewer service in its assigned service areas in Richland and Lexington Counties.

2. The Commission is vested with authority to regulate rates of every public utility in this state and to ascertain and fix just and reasonable rates for service. S.C. Code Ann. § 58-5-210, et. seq. PWR's operations in South Carolina are subject to the jurisdiction of the Commission.

3. The Commission finds the rate base methodology to be warranted and appropriate in this proceeding.

4. The Commission finds the twelve months beginning January 1, 2020 and ending December 31, 2020 are the appropriate test year in this proceeding.

5. The return on rate base methodology requires three components: capital structure, cost of debt, and cost of equity (or return on equity, “ROE”).

6. The Commission finds a capital structure of 45.00% debt and 55.00% equity to be just and reasonable.

7. The Commission finds a cost of debt of 3.79% to be just and reasonable.

8. The Company requested the opportunity to earn a 10.95% ROE. The Commission agrees with witnesses from ORS and DCA and finds the Company’s requested ROE is inappropriate, unjust, and unreasonable.

9. The Commission finds the ROE testimony presented by witnesses Rothschild and Garrett to be credible and reliable in balancing the interests of the consumer and the utility.

10. The Commission finds that the analyses and testimonies provided by DCA witness Rothschild and ORS witness Garrett to be credible, supported by substantial evidence in the record, and more accurately reflecting the true cost of equity for PWR.

11. The Commission finds the return on equity<sup>3</sup> for PWR is 8.0% which is supported by the weight of the evidence as testified by witness Garrett.

12. The Commission finds an ROE of 8.0% for PWR is appropriate, just and reasonable.

13. The Commission finds that the adjustments as discussed and listed previously above in this Order are just and reasonable and the Commission hereby adopts and approves the same.

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<sup>3</sup> The term “return on equity” means the same as “cost of equity.”

14. The Commission finds, for the reasons discussed herein, that the Partial Stipulation agreed to by all parties is fair, just, and reasonable for both the Company and its customers.

15. The Commission finds that an 8.0% ROE with the adjustments approved in the Partial Stipulation results in an increase of \$136,500 to the Company's pro forma Operating Revenues resulting in a revenue requirement of \$3,830,055. *See* Order Exhibit 2.

16. The Commission concludes revenues resulting from this Order are fair and reasonable and will allow PWR to continue to provide its customers with safe and reliable wastewater service.

17. The Commission concludes the rates, fees, and charges resulting from this Order are fair and reasonable and will allow the Company to continue the proper discharge of its public duties while protecting customers from rates that are so excessive as to be unjust or unreasonable.

## **X. ORDERING PROVISIONS**

### **IT IS THEREFORE ORDERED THAT:**

1. The Company's rates shall be set using the rate base methodology utilizing a capital structure of 45.00% debt and 55.00% equity, a cost of debt of 3.79%, a return on equity of 8.0%, which results in a return on rate base of 6.11% and an operating margin of 13.23%.

2. All adjustments in the Partial Stipulation are adopted. The Partial Stipulation is attached hereto as Order Exhibit 1. The results of an 8.0% ROE on the

adjustments approved in the Partial Stipulation result in an increase of \$136,500 to the Company's pro forma Operating Revenues resulting in a revenue requirement of \$3,830,055. *See* Order Exhibit 2.

3. The tariff language related to limitation of liability for interruption or failure to furnish service the Company proposed has been withdrawn and is not approved. The other modifications the Company proposed to the language in its Rate Schedule as reflected in the Partial Stipulation are approved.

4. The Company shall design and file rates that produce the revenue increase granted in this Order within ten (10) days of the date of this Order. The tariffs should be electronically filed in a text searchable PDF format using the Commission's DMS System (<https://dms.psc.sc.gov>). The rates, fees, and charges in the revised tariffs shall also be consistent with the adjustments as stipulated between the Parties and the 8.0% ROE authorized in this Order. The Company shall provide a reconciliation of each tariff rate change approved as a result of this order to each tariff rate revision filed. Such reconciliation shall include an explanation of any differences. The Company shall also serve these documents on the other parties to this case, also within ten (10) days of the date of this Order, who shall verify with this Commission within five (5) days of the date of receipt of these documents that said rates are consistent with the provisions of this Order.

5. The Company shall provide notice of the rate adjustments approved herein to its customers either before (such as a special mailing) or contemporaneously (such a conspicuous notice on the bill or by a bill insert) with the first bill rendered after the new rates take effect.

6. The rates and charges approved and resulting from this Order may be charged for service provided on or after the date of this order.

7. The Company's books and records shall continue to be maintained according to the NARUC Uniform System of Accounts.

8. PWR shall maintain a performance bond for sewer operations in the amount of \$350,000 in compliance with S.C. Code Ann. § 58-5-720.

9. PWR shall not file for a general rate case before eighteen (18) months from the date the order is issued in this proceeding, such that new rates will not be effective prior to twenty-four (24) months from the date the final order is issued in this proceeding as reflected in the Partial Stipulation agreed to by the parties and approved herein.

10. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



**FOR THE MAJORITY**

A handwritten signature in blue ink, reading "Florence P. Belser", is written over a horizontal line.

Florence P. Belser, Vice Chair  
Public Service Commission of  
South Carolina

**Justin T. Williams, Commissioner, dissents in separate opinion.**

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**Justin T. Williams, Commissioner (dissenting):** Respectfully, I dissent. The record does not support finding an 8.0% return on equity as fair and reasonable in this case.

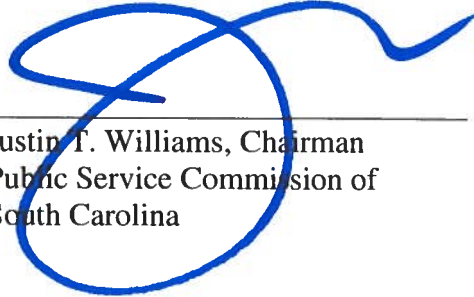
I recognize the majority's finding that an 8.0% return on equity is the top of ORS Witness David Garrett's range. The problem with the majority's finding is that ORS Witness Garrett did not recommend for the Commission to adopt his range in this case. His recommendation to the Commission is 8.9%. It is incongruent that the majority is willing to reject an expert's opinion on the ultimate question but accept calculations the expert uses to reach their opinion. The majority finding 8.0% rate of return as fair and reasonable in this case appears questionable.

Furthermore, PWR is a well-run company that prioritizes providing quality customer service and protecting the environment. The Company had only one customer appear during its public hearing, and she had no service-related complaints. (Tr. pp. 71, line 19-72, line 25). Additionally, there are no allegations of environmental mismanagement in the record. According to the totality of the evidence, the majority finding of 8.0% return on equity as fair and reasonable in this case will neither allow PWR to earn a fair and reasonable return on its investment and would comprise PWR's customer service and environmental management practices due to difficulties attracting capital. Read together, the testimony of Witness Garrett, Witness Sorenson, and Witness Moul is that 8.0% return on equity would cause investors to suffer regulatory shock and reconsider investing capital in PWR.

Moreover, I believe the record supports 9.5% as the appropriate return on equity based on the totality of the evidence in the record. ORS Witness Garrett illustrated the

average authorized return on equity for regulated electric and gas utilities is approximately 9.5%. (Tr. p. 268.20, Figure 2). On redirect examination, PWR Witness Moul agreed that a 9.5% authorized return on equity for PWR would be reasonable given the state of the record in this proceeding. (Tr. pp. 161-62).

PWR should receive 9.5% return of equity because it is fair, reasonable and supported by the record.



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Justin T. Williams, Chairman  
Public Service Commission of  
South Carolina

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2021-153-S

IN RE: Application of Palmetto Wastewater ) **PARTIAL**  
Reclamation, Incorporated for an Adjustment ) **STIPULATION**  
of Rates and Charges )

Pursuant to S.C. Code Ann. §1-23-320(F), and all other applicable statutes and regulations, this Partial Stipulation ("Partial Stipulation") is made by and among the South Carolina Office of Regulatory Staff ("ORS"), Palmetto Wastewater Reclamation, Inc. ("PWR" or the "Company"), and the South Carolina Department of Consumer Affairs ("DCA") (collectively referred to as the "Parties" or sometimes individually as "Party").

WHEREAS, the Company prepared and filed on June 16, 2021 an Application for Increase in Rates and Charges (the "Application");

WHEREAS, the above-captioned proceeding has been established by the Commission pursuant to the procedure set forth in S.C. Code Ann. § 58-5-240 *et seq.*, and the Parties to this Partial Stipulation are parties of record in the above-captioned docket;

WHEREAS, ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code Ann. § 58-4-10(B);

WHEREAS, DCA by law may advocate for the interest of consumers in matters before the Commission pursuant to S.C. Code Ann. § 37-6-604(C);

WHEREAS, ORS conducted an examination of the books and records of the Company relative to: the matters raised in the Application; test-period revenues, operating expenses,

depreciation and taxes paid by the Company; rate base, plant in service, construction work in progress, working capital, capital expenditures; and other relevant accounting matters;

WHEREAS, ORS also examined all accounting and pro forma adjustments proposed by the Company, the Company's rate design, the Company's capital structure and cost of capital, and information related to the Company's operations;

WHEREAS, DCA also examined all accounting and pro forma adjustments proposed by the Company, the Company's proposed capital structure and cost of capital, and information related to the Company's operations;

WHEREAS, the Parties have varying positions regarding the issues in this case;

WHEREAS, the Parties have engaged in discussions to determine if a settlement of some or all of the issues would be in their best interests and, in the case of ORS, in the public interest, and in the case of DCA, in the interest of consumers; and,

WHEREAS, following those discussions, the Parties determined that their interests, the DCA determined the consumer's interest,<sup>1</sup> and ORS determined that the public interest, would be best served by agreeing to this partial stipulation regarding issues raised by the Parties and pending in the above-captioned case under the terms and conditions set forth herein;

NOW, THEREFORE, the Parties hereby stipulate and agree to the following terms.

**A. STIPULATION OF TESTIMONY AND WAIVER OF CROSS-EXAMINATION**

1. The Parties agree to stipulate into the record before the Commission the pre-filed testimony and exhibits (collectively, the "Stipulated Testimony") of the below witnesses without objection, change, amendment or cross-examination with the exception of changes comparable

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<sup>1</sup> The DCA's mission is to protect consumers from inequities in the marketplace through advocacy, mediation, enforcement and education. Consumer interest for the purpose of DCA's representation includes South Carolina residents who purchase utility services primarily for a personal, family or household use.

to those that would be presented via an errata sheet or through a witness noting a correction consistent with this Partial Stipulation. With the exception of ORS Witness Daniel P. Hunnell II, the Parties further agree to the testimony and exhibits of the below witnesses being stipulated into the record without them appearing at the merits hearing on the Application. Should the Commission deny the request that the below witnesses be excused from appearing, the Parties reserve the right to engage in redirect examination of the below witnesses as necessary to respond to issues raised by the examination of their witnesses, if any, by non-Parties, parties that are not signatories to this Partial Stipulation, or the Commission. With respect to ORS Witness Hunnell, the Parties also reserve the right to engage in redirect examination or recross, if there is redirect, as necessary to respond to issues raised by the examination of ORS Witness Hunnell, if any, by non-Parties, parties that are not signatories to this Partial Stipulation, or the Commission.

PWR witnesses:

1. Donald H. Burkett
2. Mujeeb Hafeez

DCA witnesses:

1. Lafayette Morgan, Jr.

ORS witnesses:

1. Christina L. Seale
2. Daniel P. Hunnell II

2. The Parties agree that nothing herein will preclude each party from advancing its respective positions in the event that the Commission does not approve the Partial Stipulation.

**B. STIPULATION TERMS**

3. As a compromise to all of the positions advanced by the Parties with the exception of the authorized return on equity, the Parties agree to the proposal set out immediately below, and this proposal is hereby adopted, accepted, and acknowledged as the final agreement of the Parties.

4. Without prejudice to the position of any Party in future proceedings, the Parties agree to accept and adopt all recommendations, adjustments, and customer protections in the testimony and exhibits of ORS witnesses unless specifically modified by this Partial Stipulation. The recommendations, adjustments, and customer protections in the testimony and exhibits of ORS witnesses accepted and adopted by the Parties include, but are not limited to, the following:

- a. ORS's recommended adjustment related to the Company's allocation of corporate overhead and shared costs to PWR (ORS's proposed adjustment to PWR's Adjustment 2I – Miscellaneous Expenses);
- b. ORS's recommended adjustment to amortize rate case expenses over three (3) years (ORS's proposed adjustment to PWR's Adjustment 2G – Rate Case Expenses);
- c. The correction to ORS Adjustment 3 – Depreciation Expense described in ORS Witness Seale's Surrebuttal Testimony;
- d. Revenue adjustments proposed by ORS based on the actual number of customers and equivalent residential customers by class as of the end of August 2021; and
- e. The following ratepayer protections described in ORS Witness David J. Garrett's Direct Testimony related to South Carolina Utility System, Inc.'s acquisition of Ni South Carolina, LLC (now Ni South Carolina, Inc.), the parent company of PWR, from Ni Pacolet Milliken Utilities, LLC (the "Acquisition"):
  - i. PWR will not seek recovery of any goodwill associated with the Acquisition in any future rate proceedings;
  - ii. PWR will not seek to recover any acquisition or transaction costs associated with the Acquisition in any future rate proceedings;

- iii. PWR will not in any way be the guarantor of any debt for SouthWest Water Company ("SWWC") or any SWWC affiliate or subsidiary entities unless the debt is incurred for purposes specific to the PWR system and operations;
- iv. Any debt incurred by PWR is and will only be used for purposes specific to the PWR system; and
- v. PWR will not lend cash or any other capital directly to SWWC or any SWWC affiliate or subsidiary entities except for routine and prudent cash management practices.

5. The Parties agree the amount of rate case expenses to be amortized over three (3) years is \$160,000.

6. The Parties agree to amend Adjustment 2L to allow PWR recovery of the additional \$14,336 in chemicals expense requested in PWR Witness Burkett's Rebuttal Testimony.

7. The Parties agree to a capital structure for the Company that includes 45% debt and 55% equity.

8. The Parties agree to a cost of debt for the Company of 3.79%.

9. The Parties agree to various fallout adjustments to reflect the terms above and the return on equity granted by the Commission.

10. The Company agrees to amend its Rate Schedule to remove Section 13 - Limitation of Liability.

11. The Company agrees to amend the last paragraph of Section 1 – Monthly Charge of its Rate Schedule as follows:

The Utility may, at its discretion, for the convenience of the owner, bill a tenant in a multi-unit building consisting of four or more residential units which is served by a master sewer meter or a single sewer connection. However, in such cases all arrearages must be satisfied before service will be provided to a new tenant. or

~~before interrupted service will be restored. Failure of an owner to pay for services rendered to a tenant in these circumstances may result in service interruptions.~~

12. The Parties agree to PWR's request to amend Section 12 of its Rate Schedule to increase the maximum amount of its tampering charge to \$500.00.

13. PWR shall not file for a general rate case before eighteen (18) months from the date the final order is issued in this proceeding, such that new rates will not be effective prior to twenty-four (24) months from the date the final order is issued in this proceeding.

**C. REMAINING STIPULATION TERMS AND CONDITIONS**

14. The Parties agree that this Partial Stipulation is reasonable, is in the public interest, and is in accordance with law and regulatory policy. This Partial Stipulation in no way constitutes a waiver or acceptance of the position of any Stipulating Party in any future proceeding. This Partial Stipulation does not establish any precedent with respect to the issues resolved herein and in no way precludes any Party herein from advocating an alternative position in any future proceeding.

15. ORS is charged with the duty to represent the public interest of South Carolina pursuant to S.C. Code § 58-4-10(B), which reads in part:

... 'public interest' means the concerns of the using and consuming public with respect to public utility services, regardless of the class of customer and preservation of continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

ORS believes this Partial Stipulation reached among the Parties is in the public interest as defined above.

16. The Parties agree that this Partial Stipulation must be read and construed as a whole and to cooperate in good faith with one another in recommending to the Commission that this Partial Stipulation be accepted and approved by the Commission in its entirety as a fair, reasonable

and full resolution of the issues described herein. The Parties agree to use reasonable efforts before any reviewing court in the event of appeal to defend and support any Commission order issued approving this Partial Stipulation and the terms and conditions contained herein.

17. The Parties ask the Commission to approve this Partial Stipulation in its entirety without exception, modification, or additional provisions.

18. The Parties on behalf of themselves and their agents (including but not limited to their attorneys, hired consultants, and any independent contractors) agree that they have entered into this Partial Stipulation freely and voluntarily and that none of them have been pressured or unduly encouraged to enter into this Partial Stipulation.

19. The Parties agree that signing this Partial Stipulation (a) will not constrain, inhibit, impair, or prejudice their arguments or positions held in future or collateral proceedings; (b) will not constitute a precedent or evidence of acceptable practice in future proceedings; and (c) will not limit the relief, rates, recovery, or rates of return that any Party may seek or advocate for in any future proceeding. If the Commission declines to approve this Partial Stipulation in its entirety and without modification, then any Party may withdraw from the Partial Stipulation without penalty or further obligation.

20. This Partial Stipulation shall be interpreted according to South Carolina law.

21. This Partial Stipulation contains the final and complete agreement of the Parties. There are no other terms or conditions to which the Parties have agreed.

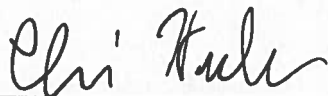
22. The Parties represent that the terms of this Partial Stipulation are based upon full and accurate information known as of the date this Partial Stipulation is executed. If, after execution, but prior to a Commission decision on the merits of this proceeding, a Party is made aware of information that conflicts, nullifies, or is otherwise materially different than that

information upon which this Partial Stipulation is based, that Party may withdraw from the Partial Stipulation with written notice to every other Party.

23. This Partial Stipulation shall bind and inure to the benefit of each of the signatories hereto and their representatives, predecessors, successors, assigns, agents, shareholders, officers, directors (in their individual and representative capacities), subsidiaries, affiliates, parent corporations, if any, joint ventures, heirs, executors, administrators, trustees, and attorneys.

24. The above terms and conditions fully represent the agreement of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Partial Stipulation, by affixing its signature or by authorizing its counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the Partial Stipulation. Facsimile signatures and e-mail signatures shall be as effective as original signatures to bind any Party. This document may be signed in counterparts, with the various signature pages combined with the body of the document constituting an original and provable copy of this Partial Stipulation.

**Representing the South Carolina Office of Regulatory Staff**



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Christopher M. Huber, Esquire

Nicole M. Hair, Esquire

**South Carolina Office of Regulatory Staff**

1401 Main Street, Suite 900

Columbia, South Carolina 29201

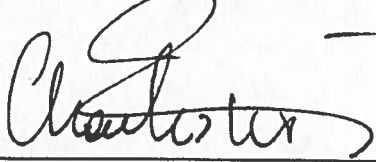
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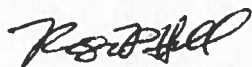
**Representing Palmetto Wastewater Reclamation, Inc.**



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**Representing the South Carolina Department of Consumer Affairs**



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**Palmetto Wastewater Reclamation, Inc.**  
**Docket No. 2021-153-S**  
**Operating Experience, Rate Base and Rate of Return - PSC Order**  
**For the Test Year Ended December 31, 2020**

<u>Description</u>	(1) <u>Per</u> <u>Application</u> <u>\$</u>	(2) <u>Accounting &amp;</u> <u>Pro Forma</u> <u>Adjustments</u> <u>Under</u> <u>Stipulation</u> <u>\$</u>	(3) <u>After</u> <u>Stipulation</u> <u>Account &amp;</u> <u>Pro Forma</u> <u>Adjustments</u> <u>\$</u>	(4) <u>Adjustment</u> <u>For</u> <u>Increase</u> <u>\$</u>	(5) <u>After</u> <u>Increase</u> <u>\$</u>
<b><u>Utility Operating Revenues:</u></b>					
Operating Revenues	3,549,800	143,755	(1) 3,693,555	136,500 (20)	3,830,055
<b><u>Total Operating Revenues</u></b>	<b><u>3,549,800</u></b>	<b><u>143,755</u></b>	<b><u>3,693,555</u></b>	<b><u>136,500</u></b>	<b><u>3,830,055</u></b>
<b><u>Utility Operating Expenses</u></b>					
Operating Expenses	933,603	720,705	(2) 1,654,308	1,365 (21)	1,655,673
Depreciation Expenses	602,136	97,649	(3) 699,785	0	699,785
Amortization Expenses	(11,168)	(1,511)	(4) (12,679)	0	(12,679)
Utility Regulatory Assessment Fees	21,079	5,101	(5) 26,180	968 (22)	27,147
Property Taxes	546,417	67,887	(6) 614,304	0	614,304
Other Taxes and Licenses	0	431	(7) 431	409 (23)	841
Federal Income Taxes	112,336	(9,613)	(8) 102,723	26,685 (24)	129,407
State Income Taxes	30,538	(4,793)	(9) 25,745	6,688 (25)	32,433
Deferred Federal Income Taxes	2,181	(2,181)	(10) 0	0	0
Deferred State Income Taxes	2,181	(2,181)	(11) 0	0	0
<b><u>Total Utility Operating Expenses</u></b>	<b><u>2,239,303</u></b>	<b><u>871,494</u></b>	<b><u>3,110,797</u></b>	<b><u>36,115</u></b>	<b><u>3,146,911</u></b>
<b><u>Net Utility Operating Income (Loss)</u></b>	<b><u>1,310,497</u></b>	<b><u>(727,739)</u></b>	<b><u>582,758</u></b>	<b><u>100,385</u></b>	<b><u>683,144</u></b>
Add: Interest and Dividend Income	3,706	(3,706)	(12) 0	0	0
Add: Allowance for Funds Used During Construction	18,650	(18,650)	(13) 0	0	0
Add: Amortization of EDIT	0	0	0	19,880 (26)	19,880
<b><u>Net Income (Loss) For Return</u></b>	<b><u>1,332,853</u></b>	<b><u>(750,095)</u></b>	<b><u>582,758</u></b>	<b><u>120,265</u></b>	<b><u>703,024</u></b>
<b><u>Original Cost Rate Base:</u></b>					
Plant in Service	16,498,687	733,168	(14) 17,231,855	0	17,231,855
Accumulated Depreciation	(4,986,910)	(127,226)	(15) (5,114,136)	0	(5,114,136)
Contributions in Aid of Construction - Net	(347,654)	(3,338)	(16) (350,992)	0	(350,992)
Net Plant	11,164,123	602,604	11,766,727	0	11,766,727
Accumulated Deferred Income Taxes	(4,362)	(25,908)	(17) (30,270)	0	(30,270)
Excess Deferred Income Taxes	(438,319)	0	(438,319)	0	(438,319)
Materials and Supplies	0	0	0	0	0
Prepayments	11,014	0	11,014	0	11,014
Cash Working Capital	116,700	85,472	(18) 202,172	0 (27)	202,172
<b><u>Total Rate Base</u></b>	<b><u>10,849,156</u></b>	<b><u>662,168</u></b>	<b><u>11,511,324</u></b>	<b><u>0</u></b>	<b><u>11,511,324</u></b>
<b><u>Return on Rate Base</u></b>	<b><u>12.29%</u></b>		<b><u>5.06%</u></b>		<b><u>6.11%</u></b>
<b><u>Operating Margin</u></b>	<b><u>26.59%</u></b>		<b><u>10.46%</u></b>		<b><u>13.23%</u></b>
<b><u>Return on Equity</u></b>	<b><u>17.97%</u></b>		<b><u>6.10%</u></b>		<b><u>8.00%</u></b>
<b><u>Interest Expense</u></b>	<b><u>389,072</u></b>	<b><u>(192,746)</u></b>	<b><u>(19) 196,326</u></b>		<b><u>196,326</u></b>

Palmetto Wastewater Reclamation, Inc.  
Docket No. 2021-153-S  
Capital Structure - PSC Order  
For the Test Year Ended December 31, 2020

Description	Capital Structure	Ratio	Pro Forma Ratio	Per Book				After Proform				After Increase			
				Rate Base	Embedded Cost	Weighted Cost/Return	Income for Return	Rate Base	Embedded Cost	Weighted Cost/Return	Income for Return	Rate Base	Embedded Cost	Weighted Cost/Return	Income for Return
Long-Term Debt	\$4,228,281	40.08%	45.00%	\$4,348,342	3.79%	1.52%	\$164,802	\$5,180,096	3.79%	1.71%	\$196,326	\$5,180,096	3.79%	1.71%	\$196,326
Shareholder Equity	\$6,321,572	59.92%	55.00%	\$6,500,814	17.97%	10.77%	\$1,168,051	\$6,331,228	6.10%	3.36%	\$386,433	\$6,331,228	8.00%	4.40%	\$506,698
Total	<u>\$10,549,853</u>			<u>\$10,849,156</u>		<u>12.29%</u>	<u>\$1,332,853</u>	<u>\$11,511,324</u>		<u>5.06%</u>	<u>\$582,758</u>	<u>\$11,511,324</u>		<u>6.11%</u>	<u>\$703,024</u>